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June 18, 2020

Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, MD 20850

Re: Special Exception Nos. S-2390 and S-2391,
Petition of Farm and Home Services, Inc.;
Request for Transfer of Special Exception

Dear Chairman Pentecost and Members of the Board of Appeals,

The new owner of the property located at 23000 Davis Mill Road, Germantown, Holbrook & Grace, LLC, wishes to transfer to its name Special Exception Nos. S-2390 and S-2391 that are associated with the subject property so that it can continue to operate the existing special exceptions under its control and under its own name.

By way of background, on August 5, 1999, the Board granted Special Exception No. S-2390 (Nursery, Horticultural – Retail (59-G-2.30) and Nursery, Horticultural – Wholesale (59-G-230.0) and Special Exception S-2390 (Farm Supply, 59-G-2.21.3) to Farm and Home Services, Inc. to operate “. . . respectively, a retail and wholesale horticultural nursery and a farm supply store for the display and selling of farm products, farm tools and domestic products.” A copy of the Board’s opinion consolidating its decisions for both cases is attached. (This petitioner has in its possession only the unsigned copy of the Board’s 1991 decision. We are not able to access the Board’s files at this time in order to provide a signed copy of the decision). The uses approved in 1999 have been operated on the subject property continuously since that date and have become an established feature of the neighborhood.

In support of its request for the transfer of the subject special exceptions, Holbrook & Grace, LLC provides the following information:

1. Consent.

Holbrook & Grace, LLC has included herein a letter from Farm and Home Services, Inc. consenting to the transfer of the subject special exception to the new owner of the property.

2. Confirmation of Acceptance of Terms and Conditions of Case Nos. S-2390 and S-2391.

The principals of Holbrook & Grace, LLC have reviewed the Board's 1991 Order and are prepared to continue to operate the use as dictated by the terms and conditions established in the Board's 1999 decision.

The principals of Holbrook & Grace, LLC are also the owners and operators of Grey Goose Farm, a nursery business located in Montgomery County. The principals are familiar with the significance of a grant of special exception and are confident that they will be able to continue to operate the approved special exceptions in accordance with the terms and conditions imposed in Case Nos. S-2390 and S-2391.

3. Filing Fees.

Attached are two checks, one for each of the subject special exceptions.

4. Mailing Labels.

Also attached are mailing labels (2 sets) for all confronting and adjoining property owners.

Since Holbrook & Grace, LLC agrees to be bound by the terms and conditions of the grant of special exception in Case Nos. S-2930 and S-2931, the transfer of the subject special exceptions from Holbrook & Grace, LLC does not substantially change the nature, character or intensity of the use, nor will it substantially change the effect on traffic or on the immediate neighborhood. Accordingly, the transfer can be granted without the scheduling of a public hearing pursuant to the provisions of Section 59-G-1.3(c)(1) of the Zoning Ordinance.

Thank you for your consideration of this request for transfer.

Sincerely Yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a cursive, slightly stylized font. Above the signature, there is a horizontal line that spans the width of the signature.

Jody S. Kline

Attachments

cc: Holbrook & Grace, LLC

Germantown Citizens Association
Citizens for the Up-County
Northern Montgomery County Alliance
The Greater Goshen Civic Association

County Board of Appeals

by: _____
Katherine Freeman
Acting Executive Secretary to the Board

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Case Nos. S-2390, S-2391

PETITIONS OF FARM AND HOME SERVICES, INC.

OPINION OF THE BOARD
(Hearing held July 7, 1999)
(Effective Date of Opinion: August 5, 1999)

Case Nos. S-2390 and S-2391 are the applications for special exceptions pursuant to Sections 59-G-2.30 and 59-G-2.30.0 (Nursery, Horticultural-Retail and Nursery, Horticultural-Wholesale) and Section 59-G-2.21.3 (Farm Supply) of the Zoning Ordinance to permit, respectively, a retail and wholesale horticultural nursery and a farm supply store for the display and selling of farm products, farm tools and domestic products. The cases were consolidated for public hearing since they dealt with the same parcel of land and involved similar issues of fact.

The subject property is Part of Parcel 304, Tax Map FW 11, located at 23000 Davis Mill Road, Germantown, Maryland. Case No. S-2390 was heard in conjunction with S-2391.

Decision of the Board: Special Exception **GRANTED** subject to conditions enumerated herein.

Jody S. Kline, Esquire, represented the petitioners, Farm and Home Service, Inc., Douglas F. Crist, President. Mr. Kline called as witnesses in support of the project Al Blumberg, land planner; Robert L. Morris, transportation planner and traffic engineer; and Douglas F. Crist, President of Farm and Home Services, Inc.

Dr. Darrell Bridges, Pastor of Seneca Valley Baptist Church, and Mr. Richard Johnston, a nearby community and church member, testified, expressing qualified opposition to the project.

PETITIONER'S CASE

Testimony indicated that the subject property is located in the southeast quadrant of the intersection of MD Route 27 (Ridge Road) and Davis Mill Road, Germantown, Maryland. The property is zoned RDT and is located within the Agricultural and Rural Open Space Master Plan area. The special exception area would comprise the northernmost 7 acres of a 64-acre parcel leased by the petitioner from Mr. Fayez Hanna.

The special exception site contains three existing permanent structures including a metal building, which will be the primary retail location, a greenhouse to be used for nursery operations, and an older metal "storage shed", which, according to MNCPPC Technical Staff, is too close to the property line. Two existing mobile office/storage structures exist immediately adjacent to, but not on, the site that is owned by the property owner. These structures are to be separated from the applicant's site by a perimeter fence with no direct access.

The special exception site is located in the Cedar Grove community, an area of mixed residential, residential/commercial, institutional, agricultural, and a few commercial uses. The zoning of the applicant's parcel and the land to the east is RDT; however, a small group of parcels directly to the north, containing residential and church uses, are zoned R-200. Most land to the west and north is in the Rural Cluster Zone (and in the Clarksburg Master Plan area).

Directly across from the Davis Mill entrance to the proposed uses are two churches, and another church is approximately 1/2 mile south of the site. Just northwest of the site is a gas station/convenience store on Ridge Road in the C-1 Zone. In addition, a residential property on Ridge Road just south of the site appears to be operating a landscaping business and a Para-Medical service is operated from a home just across Ridge Road from the site.

The petitioner intends to operate a farm sales, service, and supply store with a horticultural retail/wholesale nursery on the proposed 7-acre site. No new buildings, roads, driveways or parking areas are proposed for the use. There is one access to the property from Ridge Road and one access from Davis Mill Road, within the designated area for the proposed special exceptions. Interior access is via the existing pattern of gravel roads. Designated parking spaces for 54 vehicles are provided, and perimeter landscaping of the front parking areas is proposed. Fencing will be installed around the

perimeter of the property for security reasons; split rail wooden fencing will be along the frontage of Ridge Road and Davis Mill Road, and the side and rear fencing will be a mixture of the various types of fencing sold by the farm supply operation.

Farm and Home Service will operate the farm supply component of its business selling farm products, small farm tools and equipment, and domestic products. The store will be agriculturally-oriented, but with farm and homeowners in mind. The petitioner will service the equipment it sells and will occasionally deliver products to customers.

Farm and Home Supply will operate a horticultural nursery retail and, occasionally, wholesale business from the main sales building, an attached shade house, a 5,200 square foot greenhouse, and in open display areas on the property. The petitioner will sell only small garden and landscape items. It will also sell "small" farm supplies such as fertilizers, grass seed, and lime. The petitioner may also sell seasonal farm produce such as pumpkins or apples, as a marketing device rather than a major product line. While the petitioner anticipates the vast majority of its business to be from retail rather than wholesale operations, it wishes to be sure that it is authorized to sell wholesale products on a "by-order" basis.

The petitioner represents a company with a long business history with the farm community and up-county residents, supplying agricultural and home-related products for use on farms and homes located in Upper Montgomery County. Until March 1999, the petitioner had a local outlet in Gaithersburg, however, their lease expired and was not available for renewal. To continue to serve its Montgomery County customers, Farm and Home Services has determined that the subject property would be a suitable replacement site, especially since the property has a history of agricultural service and horticultural uses.

The hours of operation (seasonally adjusted) of the combined farm supply, sales, storage, and service/horticultural nursery special exception will be 8:30 AM to 8:00 PM weekdays, 8:00 AM to 5:00 PM Saturdays, and 11:00 AM to 4:00 PM Sundays.

At the hearing, petitioner called three witnesses in support of the proposed special exceptions. Al Blumberg, qualified as an expert in the field of land planning, described the existing site and its conditions, the character of the neighborhood, and associated access points, driveways, parking areas, and the location and function of existing buildings. Mr. Blumberg provided details as to the petitioner's plans for the erection of fencing along the perimeter of the site, and indicated that no new structures would be constructed on the site. Moreover, Mr. Blumberg testified that large farm equipment would not be stored on the site. He indicated that the site would be primarily accessed via Route 27, not Davis Mill Road.

Mr. Blumberg testified that the proposed use would be fairly low intensity and that the business would employ three or four persons, with an exception for additional seasonal employees, during the course of the year. He also testified that no lighting was proposed for the site except for existing down-lighting on the eaves of the showroom. Mr. Blumberg stated that the proposed farm and home service would serve a need of the local farming community in northern Montgomery County and that the use was appropriate, and in

compliance with, the Master Plan for Preservation of Agriculture and Rural Open Space. According to Mr. Blumberg's expert opinion, the proposed use at this location would not have an adverse impact on the surrounding neighborhood, nor would any aspect of the use violate the Montgomery County Zoning Ordinance.

Mr. Blumberg also testified that his firm had investigated the cost of improving the intersections described in the Staff Report. His preliminary conclusion was that those improvements would cost in the range of \$40,000 to \$50,000.

The petitioner also called Mr. Robert L. Morris, a qualified expert in the fields of traffic engineering and transportation planning. Mr. Morris testified as to the results of a traffic analysis made at three critical intersections associated with the site. He stated that the proposed business would generate very little in the way of new traffic trips and that many of the trips into the site would be the result of passers-by, on their way home from work.

Mr. Morris also testified that major improvements to two of the three of the associated intersections would little benefit to local road users. Mr. Morris concluded that the proposed use would have no adverse traffic impact and that the use is an appropriate one for the subject property.

The petitioner's final witness was Douglas F. Crist, President of Farm and Home Service, Inc. Mr. Crist described the nature of the proposed business, with the intent being to serve the agricultural community of northern Montgomery County. He also described his prior operation of the Southern States business entity in Gaithersburg. In proposing to operate a farm supply, sales and services business, in addition to a horticultural nursery, Mr. Crist described the products to be sold to include farm products, small farm tools and equipment, limited domestic products, and various plants, shrubs and seasonal produce. He indicated that the majority of the sales would be retail-based, with occasional wholesale operations. Mr. Crist indicated his willingness to alter the hours of operation, specifically, to open at 8:30 AM on Monday through Friday, rather than the proposed 8:00 AM.

In Mr. Crist's opinion, the proposed use would be in harmony with the character of the surrounding neighborhood, would not present any objectionable noise, fumes, odors, or glare, and would not create any detrimental impact on the enjoyment of surrounding properties. Finally, Mr. Crist testified that the cost of improving all three of the associated intersections would be beyond his financial ability.

OPPOSITION CASE

Initially, the Seneca Valley Baptist Church, which adjoins the subject property, submitted written opposition to the requested special exceptions. At the hearing, Dr. Darrell Bridges, Pastor of the Seneca Valley Baptist Church testified. Dr. Bridges testified as to his concerns that approval of this project would set an unwelcome precedent for other commercial development on the Hanna property. Dr. Bridges communicated the concerns of the church community regarding the site's potential traffic impacts, including

the potential for road improvements; drainage impacts; and the location of a small shed on the site property. Dr. Bridges noted his objection to the possible proliferation of special exceptions in the locality. He also indicated a desire that the subject property be "cleaned up," regardless of the outcome of the hearing.

FINDINGS OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

The Planning Board and its Technical Staff recommended approval of the two special exceptions subject to conditions [Exhibit No. 19].

The Planning Board acknowledged "the critical piece of infrastructure that Farm and Home Services, Inc. represents needed to maintain the farm economy in the County." The Planning Board found no master plan constraints to the proposed uses and found, in fact, that the special exception uses complimented the agricultural intent of the RDT Zone. Additionally, the Planning Board found that all of the site's existing buildings appeared to meet the development standards for the RDT Zone. An existing storage shed was found to be too close to the property line; however, the Planning Board found that it could continue to be used under the nonconforming structure standards of Section 59-G-4 of the County Code.

The Planning Board found the subject area, located in the Agricultural and Rural policy area, to be exempt from any job or housing ceiling regulations; however, the Board found traffic volume at area intersections to be of particular concern. In order to resolve Local Area Transportation Review (LATR) issues, Staff recommended that the applicant provide approach lanes at the intersections of Ridge Road with Skylark, Davis Mill, and Kings Valley Roads. Staff left open the possibility, however, that the applicant would not ultimately be responsible for improvements to all three intersections where the applicant shows that "the traffic generated by previous uses on this site is taken into account and demonstrates enough "credit" that the proposed uses will not be held responsible for improvements to three intersections."

FINDINGS OF THE BOARD

Based on the testimony and exhibits of record, the Board finds that the petition satisfies all of the requirements of Sections 59-G-2.30 (Nursery, Horticultural-Retail), 59-G-2.30.0 (Nursery, Horticultural-Wholesale), and 59-G-2.21.3 (Farm Supply) of the Zoning Ordinance, and the general requirements for special exceptions contained in Section 59-G-1.21 of the Ordinance.

In reaching its findings, the Board finds that the use is permitted in the zone; complies with the requirements and standards set forth in Sections 59-G-2.30, 59-G-2.30.0, and 59-G-1.21; and is a use consistent with the Preservation of Agriculture and Rural Open Space Master Plan. The petitioner's proposal continues a use that has been in existence on the property for some time but will do so in an organized, controlled

manner and at a level of operation that is consistent with the surrounding land uses. The Board deems significant the applicant's long business history and track record in the up-county area and the applicant's previous services to the county's agricultural community. In addition, the Board finds the applicant's business plan to be well conceived with respect to staffing levels and quality of services and products provided, which indicates activities that are harmonious with the Cedar Grove Community. With respect to the existing storage shed on the site, the Board did not hear evidence to convince it that the shed can be considered a non-conforming structure under Section 59-G-4. Therefore, the Board will include a condition of approval to address that outstanding issue.

Finally, the Board finds the traffic impact of the project acceptable, given compliance with the condition below. It is likely that many patrons of the business will be patrons of the former uses on the site. In addition, many of the patrons of the business, rather than making new trips to the site, will instead be passers-by returning home from work, therefore, the Board believes that the proposed use will not have an adverse impact on nearby intersections.

Accordingly, the Board grants the requested special exception, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion granting the special exception.
3. Approval of a landscape, lighting and signage plan by the M-NCPPC technical staff which must include landscaping at the entrances on Ridge and Davis Mill roads, and appropriate designation for parking area perimeter landscaping.
4. The special exception holder must restrict delivery truck access to MD Route 27 (Ridge Road).
5. The special exception holder is required to undertake road improvements, within one (1) year, at the intersection of MD Route 27 (Ridge Road) and Kings Valley Road.
6. The special exception holder agrees that business hours for Monday through Friday will commence at 8:30 AM, rather than 8:00 AM.
7. The special exception holder is required to either rectify with the Department of Permitting Services (DPS) the outstanding issues associated with the nonconforming shed on the property; obtain a variance for the shed; or remove or relocate the shed.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donald H. Spence, Jr., Donna L. Barron and Susan W. Turnbull, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 5th day of August, 1999.

Katherine Freeman
Acting Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

Farm & Home Service, Inc.

7625 Main Street
Sykesville, MD 21784
(410) 795-1234

Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Re: Special Exception Nos. S-2390 and S-2391,
Petition of Farm & Home Service, Inc.;
Consent to Transfer (and Modification if required) of Special Exception

Dear Chairman Pentecost and Member of the Board of Appeals,


Please be advised that Farm & Home Service, Inc., the holder of Special Exception Nos. S-2390 and S-2391, consents to the transfer of said special exceptions to Holbrook & Grace, LLC.

Thank you for your consideration of this correspondence.

Sincerely,


Signature


Print Name


Date